

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO

No.: 2:18-cv-00377

JEFFREY BLEVINS, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

PREMIUM MERCHANT FUNDING ONE,  
LLC,

Defendant.

**MEMORANDUM IN SUPPORT OF DEFENDANT PREMIUM MERCHANT  
FUNDING ONE, LLC'S MOTION TO STAY DISCOVERY**

AND NOW, comes Defendant Premium Merchant Funding One, LLC ("Premium Merchant"), by and through its undersigned counsel and files the within Motion to Stay Discovery pending resolution of Premium Merchant's Motion for Judgment on the Pleadings and in support thereof, state as follows:

On August 6, 2018, Premium Merchant filed its Motion for Judgment on the Pleadings asserting that Premium Merchant is entitled to judgment as a matter of law on Plaintiff's Amended Complaint because the telephone number identified by Plaintiff was not residential in nature. ECF No. 13.

The Federal Rules of Civil Procedure permit a district court to issue a protective order staying discovery during the pendency of a motion for "good cause shown." *Bowens v. Columbus Metro. Library Bd. of Trs.*, No. 2:10-cv-00219, 2010 WL 3719245, at \*1 (S.D. Ohio Sept. 16, 2010) (quoting Fed. R. Civ. P. 26(c)). As the United States Court of Appeals for the Sixth Circuit has often recognized, "[d]istrict courts have broad discretion and power to limit or

stay discovery until preliminary questions which may dispose of the case are answered.” *Bangas v. Potter*, 145 Fed. Appx. 139, 141 (6th Cir. 2005) (citing *Hahn v. Star Bank*, 190 F.3d 708, 719 (6th Cir. 1999)). Furthermore, limitations on pretrial discovery are appropriate where claims may be dismissed “based on legal determinations that could not have been altered by any further discovery.” *Gettings v. Bldg. Laborers Local 310 Fringe Benefits Fund*, 349 F.3d 300, 304 (6th Cir. 2003). Federal courts and this district have routinely stay discovery pending dispositive motions. *See, e.g., Allen v. Nationwide Mut. Ins.*, No. 2:17-cv-561, 2017 WL 518340 (S.D. Oh. Nov. 8, 2017); *Martin v. Mohr*, No. 1:12-cv-281, 2012 WL 5915501 (S.D. Oh. Nov. 26, 2012); *Miller v. Countrywide Home Loans*, No. 2:09-cv-0674, 2010 WL 2246310 (S.D. Oh. June 4, 2010); *Eberhard v. Chicago Title Ins. Co.*, No. 1:11 CV 834, 2014 WL 12756822 (N.D. Oh. Jan. 8, 2014).

To determine whether a stay is appropriate, “a court weighs the burden of proceeding with discovery upon the party from whom discovery is sought against the hardship which would be worked by a denial of discovery.” *Bowens*, 2010 WL 3719245, at \*1. “When a stay, rather than a prohibition, of discovery is sought, the burden upon the party requesting the stay is less than if he were requesting a total freedom from discovery.” *Williamson v. Recovery Ltd. P’ship*, No. 2:06- CV-0292, 2010 WL 546349, at \*1 (S.D. Ohio February 10, 2010) (citing *Marrese v. Am. Acad. of Orthopedic Surgeons*, 706 F.2d 1488, 1493 (7th Cir. 1983)).

Premium Merchant respectfully requests that the Court stay such discovery or, in the alternative, enter a protective order that such discovery not be had, pending a ruling on the Motion for Judgment on the Pleadings. To allow such discovery to take place before that determination is made would impose undue burden and expense upon Premium Merchant and will not result in any prejudice to the Plaintiff or any other party.

Accordingly, Premium Merchant respectfully requests that discovery be stayed or, in the alternative, that a protective order be entered.

Respectfully submitted this 6<sup>th</sup> day of August, 2018,

/s/ James M. Doerfler

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LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of August, 2018, a true and correct copy of the foregoing Motion for Judgment on the Pleadings has been filed electronically and is available for viewing and downloading from the federal courts' Electronic Case Filing system.

/s/ James M. Doerfler

James M. Doerfler (OH # 59350)